IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

OP.No. 31761 of 1999(F)

PETITIONER:

S.KUNJUMON,
C.K. RUBBER & FANCY STORES,
KADAMPANAD.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)

RESPONDENTS:
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1. **THE INTELLIGENCE OFFICER,**
   COMMERCIAL TAXES,
   PATHANAMTHITTA.

2. **COMMISSIONER OF COMMERCIAL TAXES,**
   PUBLIC BUILDINGS, THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI. NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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O.P.No.31761 of 1999

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Dated this the 17th day of January, 2007

J U D G M E N T

The petitioner is an assessee under the Kerala General Sales Tax Act. On an inspection conducted by the 1st respondent in the petitioner's premises the 1st respondent found excess stock of 344.500 kgs. of rubber sheet and 310.200 kgs. of scrap rubber. In view of the discrepancy in stock, the 1st respondent initiated proceedings under Section 45(A) of the KGST Act and imposed a penalty of Rs.11,456/- on the petitioner by Ext.P1 order. The petitioner took up the matter in revision and the first revisional authority, viz., Deputy Commissioner of Sales Tax, passed Ext.P2 order confirming the finding regarding the excess stock but reducing the penalty to Rs.5,728/-. A further revision preferred by the petitioner before the Commissioner of Commercial Taxes was rejected by

Ext.P3 order. The petitioner is challenging Exts.P1 and P3 orders in this original petition.

2. The only ground raised before me by the petitioner is that finding regarding the excess stock by the 1st respondent is unsustainable. According to the petitioner, there was no excess stock. Actually what was available was stock which has already been sold, but had not been lifted by the purchaser. This is a pure question of fact, which I am afraid I cannot go into in proceedings under Article 226 of the Constitution of India, especially since three authorities have concurrently found that question of fact against the petitioner. In that view, I do not find any merit in this original petition and accordingly the same is dismissed.

Interlocutory applications stand closed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.31761 of 1999

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J U D G M E N T

17th January, 2007